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IN THE

# Supreme Court of the United States

**October Term, 1944.**

**No. 43.**

THE UNITED STATES OF AMERICA,
*Appellant,*

*v.*

MARGARET M. JOHNSON and MARY E. LAYTON, Doing Business as THE UNITED STATES DENTAL COMPANY, and VOYLE CLARK JOHNSON.

**Appeal From the District Court of the United States for the District of Delaware.**

# BRIEF FOR APPELLEES.

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THE UNITED STATES OF AMERICA,

*Appellant,*

*v.*

MARGARET M. JOHNSON AND MARY E. LAYTON, DOING BUSINESS AS THE UNITED STATES DENTAL COMPANY, AND VOYLE CLARK JOHNSON.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF DELAWARE.

## BRIEF FOR APPELLEES.

The statement of the case, the manner in which the case is brought to this Court, the constitutional and statutory provisions involved, and the reference to the order of the District Court quashing both the original information and the amended information are correctly and sufficiently set forth in the Government's brief (pp. 1 to 8 inc.).

## ARGUMENT.

### I. Offense Complete at the Place of Mailing.

The Federal Denture Act prohibits the use of the mails for the purpose of sending or bringing prohibited matter into a state, the laws of which prohibit, etc. The significant words of the statute are, "to use the mails * * * for the purpose of sending or bringing into any state * * *". The statute contains no venue clause. The act of *using the mails* coupled with the *intent* of sending the prohibited mat-

ter into a state the laws of which prohibit, etc., is the crime, consisting of two elements which this statute was designed to punish. When this is done, the offense is complete. Thus, when the defendants *deposited* the dentures in the United States mails in the Post Office at Chicago, Illinois, *with the intent* of sending them to the State of Delaware, the offense was complete and triable in the District of Illinois and nowhere else! The meaning of the language in the statute is plain, and in the absence of a special venue provision, the alleged offense can only be prosecuted in the district where the crime was actually and wholly committed.

It is not an essential prerequisite to a valid conviction under this statute that the purpose or intent be in fact effectuated. Since the crime was *complete* at the place of sending with the proscribed purpose mentioned, the District of Illinois was the only place where the case could be tried.

The federal courts have frequently passed upon this very question of venue in a consideration of statutes closely analogous to the statute now before the court. Reference to those statutes[1] and those cases serves as persuasive authority in the interpretation of the Federal Denture Law which has now made its initial appearance before a federal court. It is evident from an examination of those statutes that where Congress intends that anyone violating the provisions of the law shall be prosecuted in the district where the proscribed matter was delivered, it has said so in plain and unmistakable language.

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[1] *Securities and Exchange Act*, Sec. 20 (b), 15 U. S. C. A. Sec. 77 (b);
*The Anti-Lottery Act*, as amended, 18 U. S. C. A., Sec. 336;
*An Act Relating to the Advertisement of Intoxicating Liquors in Prohibited States*; 18 U. S. C. A., Sec. 341, 345;
*The National Motor Vehicle Theft Act*, 18 U. S. C. A. Sec. 408;
*The Elkins Act*, 49 U. S. C. A., Sec. 41;
*The Ashurst Sumners Act*, 18 U. S. C. A., Sec. 396 (a).

The original *Anti-Lottery Act*, Sec. 3894 of the Revised Statutes U. S., Sec. 14, Criminal Code, enacted in 1872 provided that:

> "Any person who shall knowingly deposit or cause to be deposited or who shall knowingly send or cause to be sent anything to be conveyed or delivered by mail in violation of this section, etc., shall be deemed guilty of a misdemeanor * * *."

There is not a single reported case of a prosecution under the foregoing statute in any district other than in the district where the prohibited matter was deposited in the mails. No one will deny that the language of the foregoing statute containing the words, "cause to be sent anything to be conveyed or delivered by mail * * *" contemplates the use of the facilities of the United States Post Office for the purpose of sending or transmitting through the United States mails the matter prohibited by the statute.

In the *Anti-Lottery Act* as originally enacted in 1872 a person who knowingly caused to be sent anything to be conveyed or delivered by mail, etc., was deemed to have committed the offense wholly completed in the jurisdiction where the deposit in the United States mails was made.

Much force and reason may be given to this conclusion when we examine the *Anti-Lottery Act* as amended in 1890. The provision as amended was as follows:

> "Any person who shall knowingly deposit or cause to be deposited or who shall knowingly send or cause to be sent anything to be conveyed or delivered by mail in violation of this section *or who knowingly causes to be delivered by mail anything herein forbidden * * * shall be deemed guilty of a misdemeanor.*" (The italics indicates the words that were added by the amendment of 1890.)

The first reported case of a prosecution under the *Anti-Lottery Act* as amended was that of *United States v.*

*Horner*, 44 Fed. 677. The case arose in the Southern District of New York upon an application for an order removing Horner to the Southern District of Illinois. Judge Brown of the Circuit Court of Appeals pointed out that three distinct and separate offenses were created by the amended section above quoted:

(1) *Deposit* or cause to be deposited matter in the mail.

(2) *Send* such matter or causing to be sent by mail.

(3) Causing such matter to be *delivered* by mail.

The first and second offenses do not require for their completion that the matter deposited in the mail should be delivered to the person to whom it is addressed. The third offense does.

The first four counts in the indictment as Judge Brown construed them were based on the clause of the statute which related to the deposit of the forbidden matter, and they charged an offense which would not require for its completion that the matter so deposited should have been delivered. The fifth count, however, alleged that Horner had knowingly *caused to be delivered* by mail to Mrs. N. Schuchman at Belleville in the Southern District of Illinois a certain circular containing a list of prizes to be awarded at lottery. The offense alleged in that count was triable in the Southern District of Illinois and the order directing Horner's removal from New York to the Southern District of Illinois was affirmed by the United States Supreme Court (12 Sup. Ct. 522, 143 U. S. 207). Judge Brown in disposing of the fifth count in the indictment stated:

> "I have no doubt that the last count charges an offense which is not, and can not be completed without delivery of the matter by mail to the person to whom it is addressed * * * and when such delivery is made in accordance with the intent of the accused, the offense is committed in the place where the delivery is made."

The Supreme Court of the United States in affirming the decision in the *Horner Case, supra*, approved Judge Brown's conclusion that the *Anti-Lottery Act* as amended in 1890 created three distinct and separate offenses only one of which required for its completion that the matter deposited in the mails should be delivered to the person to whom it is addressed. In all other instances the depositing of the matter in the United States mails is a complete offense triable in the jurisdiction in which the matter was deposited.

To the same effect is the case of *United States v. Conrad*, 59 Fed. 458. The indictment in that case charged that the prohibited matter was deposited in the Post Office at New Orleans. There was no allegation that the defendant had caused such matter to be delivered to the addressee in the District of West Virginia nor any allegation that it was delivered. Judge Goff held that the offenses charged against the defendant were commenced and completed in the Eastern District of Louisiana if at all, and in so doing decided that Section 731 of the *Revised Statutes* (Sec. 42 of the Judicial Code) had no application to this case because it is only applicable when any offense against the United States is begun in one United States judicial district and completed in another. His opinion is as follows:

> "In the case of *United States v. Horner*, 44 Fed. 677, Judge Brown of the district court for the southern district of New York, in speaking of said section, said: 'Three somewhat different offenses are created by the section above quoted. (1) * * * (2) * * * (3) * * *' This construction has received the approval of the Supreme Court of the United States in *Horner v. United States*, 143 U. S. 207, 12 Sup. Ct. 407.
>
> "The first, second, fifth and six counts of the indictment now under consideration charge the offense as depositing or causing to be deposited, and placing and causing to be placed, the forbidden matter men-

tioned, in the mails, under the first classification alluded to. The third and fourth counts charge the sending of such matter and causing it to be sent by mail, under the second of said distribution of offenses. It thus appears that there is no count under the third group—that of knowingly causing such matter to be delivered by mail. * * * The offenses coming under the first and second groups, as I have mentioned them, do not require for their completion that the forbidden matter deposited in the mails, intended for transmission therein to the person directed, should be in fact transmitted or delivered. In order to convict the party accused of these offenses it is only necessary to prove that he knowingly deposited or caused to be deposited in the mails or knowingly sent or caused to be sent, anything to be conveyed or delivered by mail in violation of said section; and thus it seems that the offenses charged in this indictment were committed, if at all, in the eastern district of Louisiana." (p. 462)

Regarding the venue clause Judge Goff said:

"I come now to consider that clause of section 3894, as amended, which provides that: 'Any person violating any of the provisions of this section may be proceeded against by information or indictment and tried and punished either in the district at which the unlawful publication was mailed, or to which it is carried by mail for delivery according to the direction thereon, or at which it is caused to be delivered by mail to the person to whom it is addressed.' It will be observed that this clause does not create any new or additional offenses, but simply provides the mode of procedure, and the place of trial and punishment, for any person violating any of the provisions of said section. The offenses created by it (section 3894) I have already described. The clause I have just quoted must be construed in connection with a clause of sec-

tion 2 of article III of the Constitution of the United States, which reads as follows: * * * Also it must be considered in connection with the Sixth Amendment to the Constitution, reading as follows: * * * (pp. 465, 466). This amendment is to be liberally construed. Giving full effect to these constitutional provisions, as I must do, and regarding all legislation that conflicts therewith as null and void, as it is my duty to do, I must decline to enforce that clause of section 3894, as amended, that permits a person accused of crime to be prosecuted in a court held in a state and district other than the state and district in which the crime was committed. (p. 466)

"Nor do I understand the case of *In re Palliser*, 136 U. S. 257, 10 Sup. Ct. 1034, as does the district attorney. * * * It will be noted that the offense charged against Palliser was not the unlawful *mailing* of the prohibited matter, but was, in effect, that of attempting to bribe a postmaster in the discharge of his official duty. The Supreme Court said: 'It might admit of doubt whether any offense against the laws of the United States was committed until the offer or tender was known to the postmaster and might have influenced his mind. But there can be no doubt at all that, if any offense was committed in New York, the offense continued to be committed when the letter reached the postmaster in Connecticut, and that, if an offense was committed in New York, an offense was committed in Connecticut; and that in either aspect the district court of the United States for the district of Connecticut had jurisdiction of the charge against the petitioner." (p. 465)

The present case arising under the Federal Denture Act falls within the category of those cases holding that an offense is punishable in the district where the crime was actually and wholly committed. As the learned court below pointed out:

> "In short, there was a completed criminal offense at the moment of mailing because use plus purpose of sending or bringing into any state is what the statute prohibits."

**II. The Federal Denture Law Does Not Create a Separate and Distinct Offense in a District Other Than the District of Mailing.**

We may now turn to those cases arising under the statute relating to the use of the mails in furtherance of fraudulent schemes (Sec. 5480 of the *Revised Statutes*, Sec. 215 *Criminal Code*) in general as distinguished from the *Anti-Lottery Statute* which relates to a particular species of fraud. As this statute read in the year 1898 when *United States v. Sauer*, 88 Fed. 249, was decided, the gist of the offense contemplated by Sec. 5480 was stated thus:

> "Whoever shall in and for executing such scheme or artifice or attempt to do so place or cause to be placed any letter, packet, writing * * * in any post office, branch post office or street or hotel letter box of the United States to be sent or delivered by the said post office establishment * * * shall be deemed guilty of a misdemeanor."

It did not contain the words "or who shall knowingly cause to be delivered by mail" and in that particular differed from Sec. 3894 as amended.

The defendant in the *Sauer* case, *supra*, argued that the indictment was based on Sec. 5840, while the government insisted that it could be regarded as based on Sec. 3894. Deciding against the government on that point, Judge Severens treated the indictment as based on Sec. 5840, and held that the words "to be sent or delivered by the said post office establishment" merely denote the *intent* with which the letter is placed in the post office, and those words alone are not sufficient to create the separate and distinct offense of causing the prohibited matter to be delivered.

The court concluded that the indictment could be prosecuted only in the District of Illinois where the fraudulent matter was placed in the post office and not in the Eastern District of Pennsylvania to which the prohibited matter was sent. To the same effect is the case of *United States v. Stever* (1911) 222 U. S. 167.

Following the decision in *United States v. Stever, supra*, Sec. 5480 was amended by adding the words "or shall knowingly cause to be delivered by mail according to the direction thereof." Since that amendment there appears to be no difference between Sec. 3894 (*Anti-Lottery Statute*) and Sec. 5480 (*Use of Mails to Defraud Statute*) with reference to venue.

Thus, after the amendment, but only by reason thereof, violations of this statute may be prosecuted in the district where the forbidden matter is delivered, if in fact it is delivered.

The cases of *Salinger v. Loisel*, 265 U. S. 224 (1924) and *Kay, et al. v. Snyder*, 20 Fed. (2d) 273 (1927), arose after the aforementioned amendment. In each of those cases the court pointed out that under the original statute (these indictments were based on Sec. 5480) the offense was complete when the letter was placed in the mail for transmission and the place of deposit was the place where the offense was committed regardless of where the letter was delivered or whether it was delivered at all; but the new clause inserted into the amended statute enlarged the original definition of the offense so that if the letter is delivered, the offense may be dealt with in the district of the delivery as that is the district in which the defendant caused it to be delivered.

The opinion of the court in the *Salinger* case, *supra*, was delivered by Mr. Justice Van Devanter who also wrote the opinion in the case of *United States v. Freeman*, 239 U. S. 117; 36 Sup. Ct. Rep. 32, upon which the government in the case at bar places strong reliance and to which we shall later refer at greater length. It is a significant

fact, that Mr. Justice Van Devanter did not once mention the *Freeman* case as authority for the conclusion reached by the court in the *Salinger* case.

The government now attempts to spell out of the phrase, "to use the mails" contained in the Federal Denture Act a meaning which would embrace three distinct and separate offenses, namely: *depositing, sending*, and *causing to be delivered*. In all kindred statutes relating to the use of the mails, the acts of depositing, sending and causing to be delivered were treated as three separate and distinct offenses.[2] It is an established principle of statutory construction that a statute should be construed in the light of previous legislation upon the same general subject. It is not consistent with the rules of construction which relate to the interpretation of statutes creating criminal offenses to enlarge and extend words beyond their ordinary plain natural import. An offense cannot be created or enlarged by the insertion in a statute of a venue clause, but where it is present, it may throw light on the meaning of the language defining the offense.

The phrase contained in the statute under consideration "to use the mails" means to employ or to avail oneself of the facilities of the United States Post Office. When once such use is made of the United States mails at the district of origin coupled with the intent denoted in the statute, the offense is complete. The phrase "to use" as employed in the Federal Denture Act does not contemplate the full and continued use of the facilities of the United States mails so that an offense is committed and completed not only in the district of origin and in the district of destination, but likewise in every district through which the forbidden matter passes. Certainly, the Act does not say so.

This brings us to the theory of "continuing use", or to put it another way, the theory of a "continuing offense."

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[2] See United States v. Horner (supra);
See United States v. Conrad (supra);
See United States v. Sauer (supra).

## III. Theory of Continuing Offense Does Not Apply to the Case at Bar.

The general principle that one who commits a criminal act in one county, state or district may be held responsible for its continuous operation in another to which its effect extends does not apply to the case at bar.

The theory of a continuing offense is applicable only where the actual carriage or movement of the proscribed matter is the essential element of the offense. In every such case the offense is committed and cognizable in every district through which the matter moves in transit.

In the case of *Davis v. United States*, 43 C. C. A. 448, 104 Fed. 136, the defendant was indicted in Texas for obtaining by false billing and false representation at Cincinnati, Ohio, the transportation of goods from that city to Dallas in the State of Texas at less than the established rates in violation of Sec. 10 of the interstate commerce act as amended by Act March 2, 1889. An application for his removal to Texas for trial was presented to the court in Ohio on the ground that the offense was begun in that circuit and ended in the fifth circuit under Sec. 731, *although nothing occurred in the latter* except the completion of the transportation. The Circuit Court of Appeals of the Sixth Circuit held that the fraud was begun and completed in Cincinnati and that the offense was not indictable in Texas. Judge Day, later Justice Day, stated:

> "The reading of the indictment, as well as the facts stated in the bill of exceptions, shows that the acts alleged to have been committed by appellants were all done and performed in the City of Cincinnati, in the Southern District of Ohio. The false representation of the character of the goods, and the delivery for transportation, and every act directly alleged to have been done by appellants took place in that jurisdiction.
>
> "It is contended on the part of the Government that, while this may be true, the crime was not completed in the Southern District of Ohio, but that it re-

quired *transportation of the goods* * * * and that this was not completed until the goods reached their destination at Dallas; and that, therefore, the offense would be committed only when this transportation beyond state lines *is completed*, and the case would then come within the provisions of Sec. 731 Rev. Stats. U. S., which provides that:

"'When any offense against the United States is begun in one judicial circuit and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined or punished in either district in the same manner as if it has been actually and wholly committed therein.'

"This section was intended to provide for that class of cases where the crime is not completed in one district, but *a separate and distinct act of commission essential to the crime* is committed in another district, in which case the statute provides that prosecution may be had in either district. That class of cases is illustrated in the case of *In Re Palliser*, 136 U. S. 257, in which the offense charged was an offer of money, contained in a letter mailed in New York and addressed to a postmaster in Connecticut, and where the Supreme Court held that the offense *continued to be committed* in Connecticut; it was there that the act of the accused *operated upon the mind of the postmaster;* and there it was that he received the proposal and the criminal act became effective.

"This brings us to consider what is the nature of the offense and where does it become complete. * * *

"It is not *transportation* of the goods which is prohibited and punished, but *the obtaining* of the transportation by means of false and fraudulent conduct is the gist of the offense. If the goods are accidentally lost, is the crime any the less committed when all the acts of the accused, with the intent and purpose to defraud have concurred to complete the offense? We

do not think that such was the intent of Congress in enacting this law." (Italics supplied.)

Thus the court rejected the theory of a continuing offense arising out of a continuing use of transportation facilities.

In the case at bar the employment or use of the mails or of any instrumentality of interstate commerce for the purpose of sending the matter into a state, the laws of which prohibit, etc. constitutes the gravamen of the offense. The offense is not to be regarded as committed in each and every district through which the proscribed matter passes. The decision in the *Davis* case, *supra*, rests on the fact that it was not the transportation of the goods that was prohibited and made unlawful but rather the act of obtaining the transportation by means of false and fraudulent conduct which is the gist of the offense.[3] The transportation is the result or the fruit borne by such act. So in the case before the court it is neither the movement of the forbidden matter through the mails nor the delivery of such matter into the state of destination that is prohibited and made unlawful but simply the use of the United States mails coupled with the purpose denounced by the statute.

In *United States v. Fowkes*, 53 Fed. 13 (3 C. C. A. 394), 135 Sup. Ct. 1053, 149 U. S. 789, the appellee, a freight claim agent of the Philadelphia & Reading Railroad Company, was accused of signing at Philadelphia a "line voucher" which would operate at a place in the State of Missouri as an allowance of a claim for a rebate in violation of Sec. 10 of the Act to Regulate Interstate Commerce. The Court said:

"If it be assumed, however, that he did sign an instrument which permitted an unlawful act, yet it is beyond question that, whatever he did, was done in Pennsylvania, and that his offense, if any, was *both begun and completed in that state*, and that he did not

[3] See also to the same effect *In re Belknap*, (D. C.) 96 Fed. 614, 616.

elsewhere in any manner charge, demand, collect or receive, from any person whatever, an unlawful compensation for the carriage or shipment of property as in the indictment is alleged." (Italics supplied.)

In 1903 the Act to Regulate Interstate Commerce was amended by the so-called *Elkins Act*, 49 U. S. C. A. Sec. 41, which expressly provided that the offense should be regarded as committed in any district through which the goods moved. Thus the *actual carriage* of the goods was made an essential element of the offense. That being so, the actual carriage of the goods might continue through several districts. The amendment also added a special venue clause.

*Armour Packing Co. v. United States*, 209 U. S. 56, upon which the government relies is not in point because it arose *after* the enactment of the Elkins amendment and was prosecuted in the district selected by the government by virtue of the venue section which provided that the prosecution may be in any district through which the unlawful transportation moves.

The Elkins Act is an example of a statute which contemplates that persons who violate the Act may be prosecuted in any district into which the goods were brought or through which the goods moved. Other examples are the *National Stolen Property Act*, Sec. 6, 184 U. S. C. A. Sec. 418; the *National Motor Vehicle Theft Act*, 18 U. S. C. A. Sec. 408. There is a venue or jurisdictional clause in all of those statutes.

It becomes necessary to distinguish cases where an offense was committed in both districts from cases where it was completed in the second district. Manifestly, as the court below pointed out, such cases are inappropriate here where the offense was completed in the district of mailing and where the statute invoked does not create an offense in a second or other district.

The government in support of its argument that the district of Delaware has jurisdiction over the present

case cites as one of its leading authorities the case of *In re Palliser*, 136 U. S. 257.

A statute, enacted in 1878, provided that no postmaster or other person intrusted with the sale or custody of postage stamps, stamped envelopes or postal cards shall sell or dispose of them except for cash. While this is a postal statute, it does not relate to the use of the mails.

Another statute made it a misdemeanor for any person to give, promise or offer any money or other thing of value, or to make or tender any contract * * * to any officer of the United States, with intent to influence him to commit or to aid in committing, or to allow, any fraud on the United States, or to induce him to do or omit to do anything in violation of his lawful duty. This is not a postal statute, except in the broad sense that it applies to postmasters as officers of the United States.

Palliser mailed a letter at New York addressed to the postmaster at Black Hall, Connecticut, making a proposal which, if the postmaster had accepted it, would have resulted in the sale of a large quantity of stamps on credit, under an arrangement by which the postmaster, whose pay was on a commission basis, might have received during a certain period more compensation than he was lawfully entitled to. This was construed as an attempt to bribe the postmaster, or at least to induce him to sell stamps on credit in violation of his duty.

It is doubtful whether Palliser could have been prosecuted in the Southern Ditsrict of New York, but that point was not expressly decided. In holding that "if any offense was committed in New York, the offense continued to be committed when the letter reached the postmaster in Connecticut; and that, if no offense was committed in New York, an offense was committed in Connecticut", the Supreme Court was dealing with the offense of *attempted bribery*—not the offense of unlawfully *using the mails*. The fact that Palliser used the mails in committing the offense charged against him was merely a collateral fact.

The rule of precedents is that a judicial decision is an authoritative precedent only for cases in the same class. The *Palliser* case is not in the same class with the case at bar.

Obviously, the government fails to distinguish between the meaning of the word "commit" which means "to do", such as depositing a letter or matter in the United States Post Office establishment, and the word "complete", such as employing or using the facilities of the United States mails with the purpose of doing something which the language of a statute specifically prohibits. When the latter is done, the offense has not only been committed but it has been actually and wholly completed.

Other cases in the same category with the *Palliser* case, *supra*, upon which the government relies and which are not at all in point are as follows:

*Burton v. United States*, 202 U. S. 344; (govt's brief p. 24)

*Haas v. Henkel*, 216 U. S. 462; (govt's brief p. 24)

*Benson v. Henkel*, 198 U. S. 1—15; (govt's brief p. 25)

## IV. Section 42 of the Judicial Code Is Not Applicable.

Under Section 42 of the Judicial Code, 28 U. S. C. A. Section 103, an offense begun in one district and completed in another district may be tried in either district.

If the government actually intends to rely on Sec. 42 of the Judicial Code, the government's brief cites only one case which requires any notice.

*United States v. Freeman*, 239 U. S. 117; 36 Sup. Ct. Rep. 32.

This was an indictment under Sec. 240 of the Criminal Code (Act March 4, 1909, Comp. St. 1913, Sec. 10410) making it a punishable offense knowingly to "ship or cause to be shipped from one state, * * * into another state

* * * or from any foreign country into any state * * * any package of or containing intoxicating liquor of any kind, "unless such package be so labeled on the outside cover as to plainly show the name of the consignee, the nature of its contents and the quantity contained therein."

The indictment was returned in the District of Kansas and charged the defendant with violating the statute by knowingly shipping and causing to be shipped from Joplin, Missouri, to Cherokee County, Kansas, six unlabeled trunks severally containing from twelve to fifteen gallons of intoxicating liquor. By a motion to quash and a demurrer, it was objected that the offense denounced by the statute was complete when the package was delivered to the carrier for shipment and therefore that the offense charged was not cognizable in the District of Kansas but only in the Western District of Missouri. The District Court sustained the motion to quash and the demurrer, and the Government appealed.

Justice Van Devanter stated:

> "As usually understood, to ship a package *from* one state *into* another, or *from* a foreign country *into* a state, is to accomplish its transportation from the one into the other by a common carrier and is essentially a continuing act whose performance is begun when the package is delivered to the carrier and is completed when it reaches its destination. To reach a different conclusion the word 'ship' must be read as if it were 'deliver for shipment.' No doubt it sometimes has that meaning, but it plainly is not so used in this instance. The statute deals with shipping liquor from a foreign country into a state as well as with shipping it from one state into another state. It puts both upon the same plane and makes them equally criminal. Whatever marks the completion of the offense in one, likewise marks it in the other. It puts both upon the same plane and makes them equally criminal. Whatever marks the completion of the

offense in one, likewise marks it in the other. If it be the delivery to the carrier in the case of interstate shipments, it equally is this delivery in the case of shipments from a foreign country. And yet all will concede that Congress did not intend to do anything so obviously futile as to denounce as criminal an act wholly done in a foreign country, such as is the delivery to the carrier where the shipment is from a foreign country into a state. So, if its words permit, as we think they do, the statute must be given a construction which will cause it to reach both classes of shipments, and thereby to accomplish the purpose of its enactment. United States v. Chavez, 228 U. S. 525, 57 L. Ed. 950, 33 Sup. Ct. Rep. 595. This, we think, requires that it be construed as referring to the continuing act before indicated whereby the transportation into a state is accomplished, whether the package comes from another state or from a foreign country. In this view the completion of the offense will always be within a jurisdiction where the statute can be enforced.

"The District Court rightly recognized that, under Judicial Code, Sec. 42 (36 Stat. 1913, Sec. 1024) formerly Rev. Stat. Sec. 731; the offense charged was cognizable in the district of Missouri, if the place to which the packages were transported was the place of the completion of the offense. Therefore, nothing need be said upon that point."

It is interesting to observe that according to the reasoning of the court in this case, the delivery of the goods to the carrier at the point of origin *with no further transportation thereof* would constitute no offense at all. On the other hand, under the plain unmistakable language contained in the Federal Denture Law the mere mailing of the dentures for the proscribed purpose in the Northern District of Illinois does constitute an offense actually and

wholly completed therein regardless of transportation or of movement through the mails or of whether such matter ever reached the state of destination.

In the *Freeman* case, *supra*, the court held that the District of Missouri would have jurisdiction of the offense only if the goods delivered for shipment had reached the point of destination for the reason that the court held to the proposition in construing the statute under consideration in that case that delivery of the goods for shipment is not a complete offense, and that before the offense under the statute can be completed, transportation into the state into which it is sent must be accomplished. When that is done, then Sec. 42 of the Judicial Code may be invoked for the reason that an offense begun in one district and completed in another district may be tried in either district.

The Federal Denture Law creates but one offense consisting of two elements: the act of using the mails coupled with the intent expressed in the statute; not two separate offenses nor a continuing offense.

The court in the *Freeman* case, *supra*, was not confronted as the government attempts to show (p. 16 of its brief) with the duty of interpreting the meaning of the word "ship." The context of the statute on the contrary contained the phrase "to ship from one state into another or from a foreign country into a state * * *." It reached the conclusion that to "ship from one state into another or from a foreign country into a state" is to accomplish its transportation from one into the other by a common carrier and is essentially a continuing act whose performance is begun when the package is delivered to the carrier and is completed when it reaches its destination. The court, nevertheless, went on to say that the word "ship" in and of itself sometimes does mean "deliver for shipment", but it could not be given that meaning in the *Freeman* case because of the context surrounding the word in the statute.

One may "use" the mails without effectuating ultimate delivery or transportation into the state of destination; but one cannot, as the *Freeman* case holds, ship *from* one state *into* another state without effectuating the transportation into the state of destination.

The government on pages 17 and 18 of its brief advances an argument which is entirely unsound because it is based upon the assumption that the language of the statute involved in the *Freeman* case was comparable to the language of the Federal Denture Law, which we have already shown is not the case. Proceeding upon that false assumption, the government points to what it calls an incongruity resulting from the construction which the court below has given to the Denture Act. The government goes on to say that evidently it is as unlawful to send or bring a non-conforming denture by an instrumentality of interstate commerce into a state or territory from a *foreign* country as it is from another state or territory. The defect in that argument is that the Federal Denture Act is not a regulation of foreign commerce.

The indictment in the *Freeman* case was based on the Webb Kenyon Act[1] which expressly applies to shipments from foreign countries. The court's decision was chiefly based upon that fact. The Denture Law does not apply to shipments from foreign countries. Congress attempted to make it apply to foreign commerce by defining interstate commerce as "commerce between any state or territory and any place outside thereof." While Congress has a wide latitude in the matter of statutory definitions, there must be some limit beyond which the legislative body cannot go. We do not think that Congress has any power to define as interstate commerce that which plainly is not interstate commerce. Congress cannot regulate "commerce with foreign nations" without expressly so providing. To do so is plainly in violation of the Federal Constitution which deals with the power of regulating "commerce among

[1] 27 U. S. C. A., Sec. 122, ch. 6, p. 107 supp.

the several states" and the power of regulating "commerce with foreign nations", as distinct subjects. The term "interstate commerce", *co nomine*, is not used in the Federal Constitution; it is simply a convenient appellation for that which the Constitution (Article I, Section 8) defines as "commerce among the several states." Congress has no more power to change that definition than it has to change the definition of treason given in Article III, Section 8 of the Constitution. The distinction between interstate commerce and foreign commerce, made by the Constitution itself, cannot be obliterated by an Act of Congress. This raises a question which, so far as we can find, has never been passed upon by any court; probably because no other statute has attempted to say that foreign commerce shall be included in the term "interstate commerce." The government admits (Govt's brief p. 18) that the use of the term interstate commerce "to embrace what is ordinarily called foreign commerce is perhaps unorthodox."

## V. The Legislative Body Must Be Presumed to Have Intended What It Has Expressed.

The meaning of the language in Federal Denture Act is plain and in the absence of a special venue provision the alleged offense must be prosecuted in the district where the crime was actually and wholly committed. The construction of the statutes involving the use of the mails is controlling. There is indeed much persuasive evidence that Congress intended to condemn the use of the mails at the place where the prohibited matter is deposited. The Postmaster General expressed the opinion that the statute does not provide for the prosecution of the violator in the jurisdiction where the material is caused to be delivered. The following letter was written to the Chairman of the Committee of Interstate and Foreign Commerce in the House of Representatives by the Postmaster General:

"OFFICE OF POSTMASTER GENERAL

Washington, D. C., November 5, 1941.

Hon. Clarence F. Lea,
Chairman, Committee on Interstate and
Foreign Commerce, House of Representatives.

My dear Mr. Lea:

Your letter of September 18, 1941, requested a report upon H. R. 5674, a bill to protect the public health by the prevention of certain practices leading to dental disorders; and to prevent the circumvention of certain State laws regulating the practice of dentistry.

This Department has no objection to the enactment of this proposed legislation. However, it is believed that consideration should be given to the advisability of having the measure provide for prosecution of violators in the jurisdiction where the material is caused to be delivered as well as in the jurisdiction from which it is sent.

It has been ascertained from the Bureau of the Budget that this report is in accord with the program of the President.

Very truly yours,

FRANK C. WALKER,
Postmaster General."

*H. R. 5674*, 77th Congress, First Session is referred to in the Congressional Record as of September 17, 1941. It contains the statute which was before the Postmaster General and which he suggested should be rewritten so as to contain a venue provision. Three months later when the Subcommittee of the House commenced its hearing on February 3, 1942, the statute in the form in which it appears in H. R. 5674, and in its present form as enacted was introduced before the Subcommittee, together with the recommendation of the Postmaster General.[5] Likewise the Sub-

[5] See hearing of Subcommittee on H. R. 5674, pp. 1-2.

committee of the Senate commenced its hearings on July 15, 1942, and it had the identical statute before it.* The Postmaster General's suggestion was neither considered nor acted upon.

As Judge Leahy of the District Court (R. 14) in disposing of the question said:

> "This is significant for I do not think that Congress should be presumed to have intended that the statute should have a meaning at war with the interpretation of the Governmental Department charged with its administration. This precludes, I think, a holding that Congress used the words of the statute in other than their plain and ordinary meaning.
>
> "*Moreover, if Congress had intended that violation could be prosecuted in the district in which the articles were delivered, it could easily have said so as it had done in several prior instances.*" (Italics supplied.)

The failure of Congress to insert a venue provision in the statute may well indicate as the government itself admits (govt's brief p. 27) that Congress regarded a venue provision as unnecessary and left the matter of the place of jurisdiction to be determined under ordinary venue principles; and under the ordinary venue principles in a case of this kind where the offense is committed and completed at the place where the forbidden matter is placed in the United States mails, the district of origin alone has jurisdiction of the offense. Sec. 42 of the Judicial Code cannot be invoked because, as it has been pointed out previously, that section can only be applied to offenses incomplete though begun in one district and completed in a second district.

In the case of *United States v. Struel*, 99 Fed. (2d) 474 (p. 478), Learned Hand, J., said:

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* See hearings before Subcommittee on S. 2371, pp. 1-2.

> "Trial by jury certainly for the graver crimes has a high place in our traditions. Around it cluster many memories of freedom won at large cost. Its surrender is not to be lightly imputed to the accused. The interest it takes in a jury of twelve is no greater than that in a jury of the vicinage—especially in the smaller center of population where a man may be known and where he is at home. Of the two, it is indeed the less important and if consent is necessary for the surrender of one, consent is equally necessary for the other."[7]

**VI. Penal Statutes Are Strictly Construed.**

This principle is so well established that the cases in support of it are legion. Sutherland on Statutory Construction, Sec. 3305.

In the case of *United States v. Novack*, 271 U. S. 201, the Court said:

> "Statutes will not be read to create crimes, or new degrees or classes of crimes, unless the purpose so to do is plain."

We shall not take up the court's time citing any more of those cases. We are content to accept the view of the District Judge:

> "I shall not pause to discuss the fundamental rule of strict construction of criminal statutes as an additional support to the defendants' contention."

## CONCLUSION.

The question before the court is whether a prosecution for a violation of the Federal Denture Act by using the

[7] See also the observations by Judge Goff in *United States v. Conrad*, supra, that a venue clause simply provides the mode of procedure; and if construed in such a manner as to enlarge the offense or to create a new offense, it might be null and void as being in conflict with Sec. 2, Article III of the Constitution and the Sixth Amendment (ante pp. 5-7).

mails may be brought in the district in which the denture is delivered through the mails or in the district only in which the denture is deposited in the mails with the proscribed purpose denounced by the statute. The determination of that question turns on the meaning of the phrase "to use the mails * * * for the purpose of sending or bringing into any state etc. the laws of which prohibit etc."

The appellees contend that when the denture was deposited in the United States mails in the Northern District of Illinois for the purpose of sending such denture into the State of Delaware, the offense was committed and completed in the Northern District of Illinois and that the District of Delaware did not acquire jurisdiction of the case. The statute under consideration contains no venue clause. The delivery of the denture or its actual movement or carriage through the mails is no essential element of the offense. It is the act of mailing coupled with the purpose of sending the denture into the State of Delaware which constituted the offense and which the statute was designed to punish.

The theory of a continuing offense advanced by the government does not apply to the case at bar because in all cases falling within that category the offense in order to be construed as a continuing one must be such as to contemplate that the proscribed matter deposited in the United States mails should reach its destination from the point where the deposit was made or, to put it another way, must be such as to contemplate actual transmission through the mails or actual carriage by an instrumentality of interstate commerce in order for it to be punishable. In cases of this character, the transportation or the carriage or the movement of the proscribed matter in transit is the essential element of the crime. Furthermore, in every such case the offense is committed and triable in every district through which the proscribed matter passes.

There is nothing in the Federal Denture Act to indicate that Congress intended to make the delivery or the actual carriage of the proscribed matter an essential ele-

ment of the offense. As in the Anti-Lottery Statute, when Congress intended that the act of causing the proscribed matter to be delivered constitute a separate and distinct offense, it has done so by amendment in plain and unmistakable language. The theory of a continuing offense has been applied to cases arising under commercial statutes where actual transportation is the primary and essential ingredient of the offense, but it has never been applied to any postal statute. Some of the postal statutes (Sec. 3894 and 5480) as they now read, though not as originally enacted, contain a venue clause but they authorize prosecution either in the place of deposit or the place where the prohibited matter is delivered by mail and not in any district through which it is carried. The act of mailing the proscribed matter coupled with the intent expressed in the statute having been committed in the District of Illinois, the offense was completed, and the Northern District of Illinois was the only district where the offense could be tried. There was but one commission of the offense and there could be only one place where the offense could be tried, namely, the Northern District of Illinois.

The only manner in which the District of Delaware could have jurisdiction of this case is to spell out a separate and distinct offense with regard to delivery as was done in the Anti-Lottery Act as amended, or construe the meaning of the language contained in the Federal Denture Act by relying upon the theory of its being a continuing offense which we have shown is inappropriate here, or by resorting to the principles of Sec. 42 of the Judicial Code which in this case do not apply. Situations falling within that category of cases apply only to offenses incomplete when begun in one district and effectuated or completed in another district. So far as the applicability of Sec. 42 is concerned, the government gives away its own case by the following admission on page 13 of its brief:

> "Concededly, they offended against the statute in the Northern District of Illinois."

Since they offended in the Northern District of Illinois, nd the crime was completed in that district, the govern- ment's contention bottomed on Sec. 42 of the Judicial Code ails.

Reliance on Section 42 of the Judicial Code is an dmission that the Denture Act does not, by its own terms, reate an offense which can be prosecuted in the District f Delaware. Likewise, the fact that the Government is ttempting to write into the Denture Act the principle of continuing offense is also an admission that the statute oes not, by its own terms, define a continuing offense. he prosecution of the appellees in the District of Dela- ware can only be justified by reference to the express terms f the statute itself.

We are not unmindful of the fact that a penal statute ay also be a remedial statute, in which case it might be onstrued liberally with reference to its objectives only. In he present case, however, the validity of the statute is not efore the Court and the objectives thereof are not at issue. or the purpose of argument we admit by our demurrer violation under the terms of the statute begun and com- leted in the Northern District of Illinois. We are not rguing for a strict construction of the statute to aid us n showing that the appellees have not violated the statute. he sole question, therefore, presented to this Court is the uestion of venue, and on that question the statute should e strictly construed against the Government and in favor f the accused.

The District of Delaware is not the place where the ffense occurred nor is it the place where the offense al- eady begun, although incomplete, was consummated. Nor oes it fall within the category of those cases contemplating continuing offense, that is, a force set in motion which in rder for it to be effectuated must reach its destination. oth theories urged by the government are clearly inap- ropriate to the case arising under the Federal Denture ct.

It is plain that in this case the offense, if any, was begun in the Northern District of Illinois and was completed in the Northern District of Illinois and that the District of Delaware does not have jurisdiction.

For the foregoing reasons the appellees respectfully submit that the judgment below should be affirmed.

H. ALBERT YOUNG,
ALEXANDER JAMISON,
*Attorneys for Appellees.*

VOYLE CLARK JOHNSON,
*Of Counsel.*

# SUPREME COURT OF THE UNITED STATES.

No. 43.—October Term, 1944.

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| The United States of America, Appellant, *vs.* Margaret M. Johnson and Mary E. Layton, Doing Business as the United States Dental Company and Wyle Clark Johnson. | Appeal from the District Court of the United States for the District of Delaware. |

[December 18, 1944.]

Mr. Justice Frankfurter delivered the opinion of the Court.

This case concerns the construction of the Federal Denture Act of 1942, 56 Stat. 1087, 18 U. S. C. § 420(f)(g)(h) (Supp. 1943), which provides that ". . . it shall be unlawful in the course of the conduct of a business of constructing or supplying dentures from casts or impressions sent through the mails or in interstate commerce, to use the mails or any instrumentality of interstate commerce for the purpose of sending or bringing into . . ." a State or Territory any denture the cast of which was taken by a person not licensed to practice dentistry in the State into which the denture is sent. An information, filed October 4, 1943, in the District Court for the District of Delaware, charged that appellees put into the mails at Chicago for delivery in Houston, Delaware, dentures in violation of the Delaware laws pertaining to dental practice, and thereby violated the Federal Denture Act. The information was quashed on the ground that prosecution of appellees could only be had where the illegal dentures were deposited. 53 F. Supp. 596. A second information, adding counts alleging transmission into and delivery in Delaware, was quashed by entry of a formal order referring to the court's earlier opinion.[1] The Government has appealed directly to this Court under the Criminal Appeals Act, 34 Stat. 1246, as amended, 18 U. S. C. § 682 (Supp. 1943).

[1] We are concerned only with this latter information, but the court's opinion, delivered in connection with the first information, gave its reasons for quashing both informations.

Must these appellees be tried in the Northern district of Illinois or may they be tried in the district of any State through which the dentures were carried including Delaware, the place of delivery? Has Congress authorized such discretion in the enforcement of this Act? If it has, there is an end to the matter, for Congress may constitutionally make the practices which led to the Federal Denture Act triable in any federal district through which an offending denture is transported. *Armour Packing Co.* v. *United States*, 209 U. S. 56. An accused is so triable, if a fair reading of the Act requires it. But if the enactment reasonably permits the trial of the sender of outlawed dentures to be confined to the district of sending, and that of the importer to the district into which they are brought, such construction should be placed upon the Act. Such construction, while not required by the compulsions of Article III, § 2 of the Constitution and of the Sixth Amendment, is more consonant with the considerations of historic experience and policy which underlie those safeguards in the Constitution regarding the trial of crimes.

Aware of the unfairness and hardship to which trial in an environment alien to the accused exposes him, the Framers wrote into the Constitution that "The Trial of all Crimes . . . shall be held in the State where the said Crimes shall have been committed . . ." Article III, § 2, cl. 3. As though to underscore the importance of this safeguard, it was reinforced by the provision of the Bill of Rights requiring trial "by an impartial jury of the State and district wherein the crime shall have been committed." Sixth Amendment. By utilizing the doctrine of a continuing offense, Congress may, to be sure, provide that the locality of a crime shall extend over the whole area through which force propelled by an offender operates. Thus, an illegal use of the mails or of other instruments of commerce may subject the user to prosecution in the district where he sent the goods, or in the district of their arrival, or in any intervening district. Plainly enough, such leeway not only opens the door to needless hardship to an accused by prosecution remote from home and from appropriate facilities for defense. It also leads to the appearance of abuses, if not to abuses, in the selection of what may be deemed a tribunal favorable to the prosecution.

These are matters that touch closely the fair administration of criminal justice and public confidence in it, on which it ultimately

rests. These are important factors in any consideration of the effective enforcement of the criminal law. They have been adverted to, from time to time, by eminent judges; and Congress has not been unmindful of them. Questions of venue in criminal cases, therefore, are not merely matters of formal legal procedure. They raise deep issues of public policy in the light of which legislation must be construed. If an enactment of Congress equally permits the underlying spirit of the constitutional concern for trial in the vicinage to be respected rather than to be disrespected, construction should go in the direction of constitutional policy even though not commanded by it.

It is significant that when Congress desires to give a choice of trial, it does so by specific venue provisions giving jurisdiction to prosecute in any criminal court of the United States through which a process of wrongdoing moves. Such was the situation in *Armour Packing Co.* v. *United States*, *supra*. The offense there was under the Elkins Act for the transportation of goods at illegal freight rates, and Congress specifically provided for prosecution in any district "through which the transportation may have been conducted". 32 Stat. 847, as amended, 49 U. S. C. § 41 (1).

In the Federal Denture Act Congress did not make provision for trial in any district through which the goods were shipped. The absence of such a provision would in itself be significant. Its significance is enhanced when it appears that the attention of Congress was directed by the Postmaster General to the desirability of authority for a discretionary trial either at the place of shipment or at the place of receipt. He wrote to the Chairman of the House Committee on Interstate and Foreign Commerce "that consideration should be given to the advisability of having the measure provide for prosecution of violators in the jurisdiction where the material is caused to be delivered as well as in the jurisdiction from which it is sent". Hearings before Subcommittee of House Committee on Interstate and Foreign Commerce on H. R. 5674, 77th Cong., 2d Sess. (1942) p. 3. And the Committee also invited the viewpoint of representatives of the Department of Justice "on the language of the bill". *Id.* at 28. In view of the keen awareness of enforcing officials as well as that of the members of the Committee on Interstate Commerce of the problems raised by venue in criminal trials, it is inadmissible to suggest either oversight on the part of Congress in failing to make provision for choice

of venue or to make the cavalier assumption that that which is specifically provided for in other enactments—*i. e.*, trial in more than one district—was authorized but through parsimony of language left unexpressed in the Federal Denture Act.

The absence of a venue provision such as that which Congress wrote into the Elkins Act is far more rationally explained by due regard to the difference between the offenses under the Elkins and the Federal Denture Acts respectively. The venue provision under the Elkins Act underlines the offense defined by that Act, which was not the illegal sending or the bringing of goods but their "transportation". That—transportation—is inescapably a process, a continuing phenomenon. The Federal Denture Act did not make "transportation" the offense. It proscribed the use of the mails for "the purpose of sending or bringing into any State" unlawful dentures. The Act thereby hit two types of violators—the sender and the unlicensed dentist who brings in dentures from without. It is a reasonable and not a strained construction to read the statute to mean that the crime of the sender is complete when he uses the mails in Chicago, and the crime of the unlicensed dentist in California or Florida or Delaware, who orders the dentures from Chicago, is committed in the State into which he brings the dentures. As a result, the trial of the sender is restricted to Illinois and that of the unlicensed dentist to Delaware or Florida or California. The illicit sender in Chicago cannot be hauled for trial across the continent, and, conversely, the unlicensed dentist cannot be compelled to stand trial in Chicago.

The large policy back of the constitutional safeguards counsels against the unrestricted construction for which the Government contends when Congress has not commanded it; and no considerations of expediency require it. Prosecutions of federal crimes are under the general supervision of the Attorney General of the United States; United States Attorneys do not exercise autonomous authority. The vindication of the Federal Denture Act therefore does not depend upon the willingness of some local United States Attorney to prosecute on behalf of a local victim. While it might facilitate the Government's prosecution in a case like this to have its witnesses near the place of trial, there must be balanced against the inconvenience of transporting the Government's witnesses to trial at the place of the sender the serious hardship of defending prosecutions in places remote from home (including the accused's

difficulties, financial and otherwise, see R. S. § 878, 28 U. S. C. § 656, of marshalling his witnesses), as well as the temptation to abuses, already referred to, in the administration of criminal justice. Inasmuch as the statute permits and does not forbid this construction, the judgment below should be affirmed.

*Affirmed.*

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Mr. Justice MURPHY, concurring.

I join in the opinion of the Court and believe that the judgment should be affirmed.

Congress has the constitutional power to fix venue at any place where a crime occurs. Our problem here is to determine, in the absence of a specific venue provision, where the crime outlawed by the Federal Denture Act occurred for purposes of venue.

The Act prohibits the use of the mails for the purpose of sending or bringing into any state certain prohibited articles. It is undisputed that, when a defendant places a prohibited article in the mails in Illinois for the purpose of sending it into Delaware he has completed a statutory offense. Hence he is triable in Illinois. But to hold that the statutory crime also encompasses the receipt of the prohibited article in Delaware, justifying a trial at that point, requires an implication that I am unwilling to make in the absence of more explicit Congressional language.

Very often the difference between liberty and imprisonment in cases where the direct evidence offered by the government and the defendant is evenly balanced depends upon the presence of character witnesses. The defendant is more likely to obtain their presence in the district of his residence, which in this instance is usually the place where the prohibited article is mailed. The inconvenience, expense and loss of time involved in transplanting these witnesses to testify in trials far removed from their homes are often too great to warrant their use. Moreover, they are likely to lose much of their effectiveness before a distant jury that knows nothing of their reputations. Such factors make it difficult for me to conclude, where Congress has not said so specifically, that we should construe the Federal Denture Act as

covering more than the first sufficient and punishable use of the mails insofar as the sender of a prohibited article is concerned. The principle of narrow construction of criminal statutes does not warrant interpreting the "use" of the mails to cover all possible uses in light of the foregoing considerations.

Mr. Justice REED, dissenting.

The statute under consideration condemns the "use" of "the mails or any instrumentality of interstate commerce for the purpose of sending or bringing into any State or Territory" any denture which has been made without compliance with the laws of that State or Territory relating to the furnishing of such appliances. The Court narrowly interprets the term "use" to condemn as criminal only the first use of the mails; in this way the Court restricts venue for prosecution to Illinois for trial of an offender who mails a denture in Illinois which is subsequently delivered through "use" of the mails in Delaware. We think, however, that the statute condemns and makes criminal any use of the mails for the prohibited purpose. Under this interpretation the respondents' use of the mails is punishable in Delaware and the dismissal of the information in this case should be reversed.

The venue of a crime may be fixed at any place where the acts denounced as crimes occur.[1] There is no disagreement as to this rule of law. The Court reaches its conclusion upon venue under the Federal Denture Act not upon any compulsion of Constitution or statute but because a restriction of the venue to the place of mailing seemed to it more consonant with the underlying purposes of the Constitutional provisions as to venue. These purposes are thought, as the Court expresses it, to include a trial in an environment which is not alien to the accused.

We think the Court misapprehends the purpose of the Constitutional provisions. We understand them to assure a trial in the place where the crime is committed and not to be concerned with

[1] Constitution of the United States, Art. III, Sec. 2, cl. 3; Sixth Amendment. Armour Packing Co. v. United States, 209 U. S. 56, 73-77; Salinger v. Loisel, 265 U. S. 224, 232-235; Horner v. United States, No. 1, 143 U. S. 207, 213; In re Palliser, 136 U. S. 257, 265; Hyde v. Shine, 199 U. S. 62, 78; Haas v. Henkel, 216 U. S. 462, 473.

domicile of the criminal nor with his familiarity with the ironment of the place of trial. *Haas v. Henkel*, 216 U. S. 462. leed in the present information nothing appears as to residence domicile of the accused or as to their place of business.

Congress by its specification of the precise acts denounced as nes fixes venue at the place where those acts are committed. e inquiry, then, must be directed to a determination of what stitutes the crime denounced by the Denture Act. The statute demns as unlawful the "use" of the "mails or any instrumtality of interstate commerce for the purpose of sending or nging into any State" the prohibited dentures. It is not the posit of the article or its delivery which is forbidden but the e of the transportation facilities. The sending or bringing of e dentures is not denounced as a substantive crime apart from e use of mails or instrumentalities to accomplish the purpose. e crime consists of the use of the mails to send a prohibited nture "into" or bring it "into" another state. The language ds us to the conclusion that a use for the prohibited purpose rs at whatever place the proscribed denture is handled by the ils or an instrumentality of commerce.

The "use" for the "purpose" results in a continuous offense.[2] nce the offense is committed wherever the mails or the instrumentalities of interstate commerce are used for the purpose of nding or bringing the denture into a state contrary to the tute and the act has no provision otherwise limiting the place trial, the venue is at whatever place these acts are committed. e of the places in the present case is Delaware "into" which e dentures were brought by appellees' use of the mails in that e. If this analysis is correct, there was no occasion for Conss to follow the suggestion as to venue of the Postmaster General which the Court refers.

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Cf. United States v. Kissel, 218 U. S. 601; Hyde v. United States, 225 S. 347, 360-67; United States v. Socony-Vacuum Oil Co., 310 U. S. 150, 250; re Snow, 120 U. S. 274; Clark & Marshall, Crimes (4th Ed.), § 504(d); arton Criminal Law (12th Ed.), § 328. See also In re Richter, 100 Fed. 298; Morris v. United States, 229 Fed. 516, 521.

Cf. Armour Packing Co. v. United States, 209 U. S. 56, 72-74; United tes v. Midstate Co., 306 U. S. 161, 165; and see United States v. Lombardo, U. S. 73, 77; United States v. Freeman, 239 U. S. 117, and In re ser, 136 U. S. 257. The latter two cases illustrate the difference been a continuous offense and one begun in one state and completed in ther. Compare Judicial Code, Section 42, 28 U. S. C. § 103, with § 3237 H. R. 5450, 78th Cong., 2d Sess.

The title of the act indicates that it is directed at practices thought to lead to dental disorders and "to prevent the circumvention of certain State or Territorial laws regulating the practice of dentistry." 56 Stat. 1087. These state laws regulated the fabrication of prosthetic dental appliances. From the hearings[4] it is clear that the purpose of Congress was to protect the public against the evils of ill-fitting dental appliances by restricting interstate commerce to dental appliances which were approved by licensed practitioners of the state into which the appliances were brought. Such was declared to be its purpose by the report of the Senate Committee. S. Rep. No. 1779, 77th Cong., 2d Sess., p. 1. As the injury would occur normally at the place of delivery and as the act is designed to protect only those states which have laws regulating the furnishing of appliances by unlicensed practitioners, Congress would naturally enact legislation which might punish violations in the state of delivery. The prosecuting officers of that state would be most interested in enforcement and would best understand the scope of the laws of the state of delivery. Congress would not wish to leave immune shipments from foreign countries. Cf. *United States* v. *Freeman*, 239 U. S. 117.

The CHIEF JUSTICE, Mr. Justice DOUGLAS and Mr. Justice RUTLEDGE join in this dissent.

[4] Hearing before a Subcommittee of the House Committee on Interstate and Foreign Commerce, February 3 and 4, 1942, 77th Cong., 2d Sess., on H. R. 5674; Hearing before a Subcommittee of the Senate Committee on Interstate Commerce, July 15, 16, 17 and 20, 1942, 77th Cong., 2d Sess., on S. 2371.